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FILED

DISTRICT COURT OF GUAM

MAY - 1 2006

MARY L.M. MORAN
CLERK OF COURT

IN THE UNITED STATES DISTRICT COURT
FOR THE TERRITORY OF GUAM

UNITED STATES OF AMERICA,)	CRIMINAL CASE NO. <u>06-00001</u>
)	
Plaintiff,)	GOVERNMENT'S RESPONSE TO
)	DEFENDANT'S MOTION FOR
vs.)	RE-HEARING
)	
PAULINE CASTRO,)	
)	
Defendant.)	

Title 18 U.S.C. § 3143(2) allows the release pending sentence of persons convicted of drug trafficking in two circumstances: either there is a substantial likelihood that a motion for acquittal or for new trial will be granted, or the government attorney is not recommending incarceration, and the court finds by "clear and convincing evidence" that defendant is not likely to flee or pose a danger to the community. It is undisputed that defendant does not qualify for release under § 3143(2) because she pled guilty to this offense, and the government is recommending a term of incarceration.

Defendant's cite to 18 U.S.C. § 3145 is not on point. It affords persons, who are appealing from the court's denial of release pending appeal, the opportunity for such release if they meet the conditions of § 3143(a)(1). But defendant does not meet the conditions of §


1 3143(a)(1), which provides that "[e]xcept as provided in paragraph (2)," persons may be released
2 if they meet certain criteria. In short, Congress specifically excepted from § 3143(a)(1) the
3 release of convicted drug dealers unless very narrow circumstances obtain.

4 United States v. Garcia, 340 F.3d 1013 (9th Cir. 2003), is not on point, because it
5 concerns the release of persons who were convicted of civil rights violations, and therefore not
6 specifically barred by § 3143(a)(2). If defendant's reading of the statute was correct, Congress
7 would have set stringent conditions for releasing drug traffickers in § 1343(a)(2), then relaxed
8 them in § 3145. The statute is clear: § 1343(a)(2) provides the only criteria for the release of
9 drug traffickers, and defendant does not qualify.

10 Respectfully submitted this 1st day of May, 2006.

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13 By:

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